

1 Q Do you have an employment agreement with  
2 Gloryvision?

3 A Not to my knowledge.

4 Q Do you have an employment agreement with  
5 Mongo Musico?

6 A Not to my knowledge.

7 Q Could you describe the activities of  
8 Gloryvision?

9 MR. MONAGHAN: When? When?

10 MR. SHELOWITZ: Now.

11 THE DEPONENT: At the moment Gloryvision is  
12 reviewing and considering what our next project  
13 will be and how we want to move forward in the  
14 future.

15 BY MR. SHELOWITZ:

16 Q And when was the last project that was  
17 undertaken by Gloryvision completed?

18 A Our last project was Songs for Cats. And  
19 then we -- after we did that we began development of a  
20 film script. And in -- somewhere in 2006 we looked  
21 into remarketing our product and we decided to see what  
22 was out there on the Internet and looked on-line and  
23 typed up our product Songs for Dogs and Songs for Cats  
24 and saw it was being sold all over the world --

25 Q There's no --

1 A -- by Media Right and by The Orchard.

2 Q There's no question that's been posed.

3 MR. MONAGHAN: Yes, there is.

4 BY MR. SHELOWITZ:

5 Q The question was what was the last project by  
6 Gloryvision. The answer was Songs for Cats. Okay.

7 MR. MONAGHAN: I thought you asked what she  
8 was doing, what Gloryvision was doing.

9 MR. SHELOWITZ: I think that you're starting  
10 to play some games here and I'm really -- I'm  
11 disappointed and I think it's unfair to the  
12 Defendants. And I'm sure that if the Judge, you  
13 know, were to review the transcript, that she  
14 would also be a little bit disappointed.

15 We're trying to get some answers. You're  
16 suing -- your clients are suing my clients. I'm  
17 asking some questions. I'm not asking for any  
18 kind of, you know, speech about the case.

19 MR. MONAGHAN: Would you please get to the  
20 next question?

21 MR. SHELOWITZ: I'm asking the questions just  
22 like we gave you the courtesy to ask six hours of  
23 questions to Mr. Maxwell.

24 MR. MONAGHAN: Would you get to your next  
25 question?

1 MR. SHELOWITZ: We expect the same courtesy.

2 MR. MONAGHAN: Would you get to your next  
3 question, please?

4 MR. SHELOWITZ: And, you know, again --

5 MR. MONAGHAN: Would you get to your next  
6 question?

7 MR. SHELOWITZ: -- the tone and the types of  
8 interruption that I'm seeing and hearing, and  
9 coaching, is really not called for and I don't  
10 think it's permitted, frankly.

11 MR. MONAGHAN: Next question.

12 BY MR. SHELOWITZ:

13 Q Ms. Bernfeld, when was the last time to the  
14 best of your knowledge that Gloryvision has received  
15 any revenue in connection with any projects undertaken  
16 by the company?

17 MR. MONAGHAN: Object as irrelevant. I'll  
18 let her answer.

19 BY MR. SHELOWITZ:

20 Q You can answer the question.

21 A Yes. We still have sales of Songs for Dogs  
22 and Anne usually handles them. And I know I spoke with  
23 somebody the other day who --

24 Q Again, I will ask you the questions, and  
25 you've answered it.

1 Now, another question that I have is do you  
2 get paid by Gloryvision?

3 MR. MONAGHAN: When? When?

4 MR. SHELOWITZ: I'm asking a question, and if  
5 she can answer the question --

6 MR. MONAGHAN: Then I object to the form.

7 You'll have to specify a time.

8 MR. SHELOWITZ: And that's what you're  
9 entitled to do. Okay?

10 MR. MONAGHAN: Specify a time.

11 MR. SHELOWITZ: If you have an objection,  
12 state your objection.

13 MR. MONAGHAN: I just did.

14 MR. SHELOWITZ: The witness answered the  
15 question. Again, I'm not giving another warning.  
16 The next call is I'm going to stop this deposition  
17 and we're going to make it go forward in Florida.

18 (Overlapping speech.)

19 MR. SHELOWITZ: The Judge said we should give  
20 it a try by phone. I was not happy about it. And  
21 I'm trying to do the best that I can. But you're  
22 not allowing me to ask questions that are relevant  
23 and you're objecting inappropriately.

24 BY MR. SHELOWITZ:

25 Q So I'm asking you a question, does -- do you

1 receive any payment from Gloryvision?

2 A Not at the moment.

3 Q And when was the last time you received a  
4 payment from Gloryvision?

5 A You mean a payment from Gloryvision  
6 personally like Gloryvision pays me or does -- or  
7 Gloryvision receives money? I'm confused.

8 Q When was the last time that you, Ellen  
9 Bernfeld, received some payment from Gloryvision?

10 MR. MONAGHAN: Object to the question.

11 THE DEPONENT: I don't really -- I don't --

12 MR. MONAGHAN: Irrelevant.

13 THE DEPONENT: Yeah. I don't remember  
14 actually.

15 BY MR. SHELOWITZ:

16 Q Have you ever received any payments from  
17 Gloryvision?

18 A I don't remember. I'm not sure.

19 Q What was your understanding in connection  
20 with -- if any?

21 A In terms of my -- well, with Gloryvision it's  
22 Anne and my -- my understanding is Gloryvision is Anne  
23 and my company and we created this production company  
24 to create entertainment of properties and products.

25 Q And were you ever supposed to receive any

1 payment for any -- any sales of any properties or  
2 products created by Gloryvision?

3 A Possibly, yes, but Anne and I funded our  
4 productions with our own money.

5 Q With the sales of, for example, Songs for  
6 Dogs, did you anticipate you, Ellen Bernfeld  
7 anticipate, receiving any money from Gloryvision  
8 resulting from the sales of that product?

9 A Sure.

10 Q And did you ever receive any money for the  
11 sales of that product?

12 A Yes, I did -- Gloryvision received money for  
13 the sales of that product.

14 Q Did you ever receive any money?

15 A Did I ever receive any money? I don't -- I'm  
16 not sure. Because we put the money back into  
17 Gloryvision.

18 Q Did you ever ask -- did you ever ask Anne how  
19 much money the company had earned from sales of Songs  
20 for Dogs?

21 A Possibly.

22 Q Did she ever answer you?

23 A It was more about -- rather than money, it  
24 was more about how much product we sold.

25 Q So she -- Anne Bernfeld never told you how

1 much money Gloryvision earned from the sales of Songs  
2 for Dogs?

3 A I'm not sure.

4 Q And what about Songs for Cats?

5 A I'm not sure.

6 Q Okay. So is it true that you have no idea  
7 how much money, if any, was ever earned by Gloryvision  
8 from the sales of Songs for Dogs and Songs for Cats?

9 A No, that's not true.

10 Q And why isn't that true?

11 A Because it's -- because we didn't discuss it  
12 in terms of money, we discussed it in terms of  
13 products. So if my product sold about -- if Songs for  
14 Dogs sold 10,000 copies and it was -- it was -- the  
15 gift box cost, I think it was, 18.95, then you times  
16 that by 10,000 and you get how much revenue you made.

17 Q So --

18 A So, I mean --

19 Q What was sold for 18.95?

20 A The gift box initially was sold for -- I  
21 think it was sold for 18.95 initially.

22 Q And do you know of the Songs for Dogs how  
23 many gift boxes you had sold?

24 A I'm not sure exactly.

25 Q Is it more than 500?

1 A I think so.

2 Q Is it more than 1,000?

3 A I don't know. I don't know the figure.

4 Q Do you think it's probably between 500 and  
5 1,000 gift boxes that were sold?

6 A I don't know.

7 Q Do you know how many you produced?

8 A I think -- I'm not exactly sure. I think  
9 maybe --

10 MR. MONAGHAN: Don't speculate.

11 THE DEPONENT: Yeah. I don't know. I'm not  
12 exactly sure.

13 BY MR. SHELOWITZ:

14 Q Did you produce more than ten?

15 A Oh, yes.

16 Q And what is -- you know that it's more than  
17 ten and you don't really know how much --

18 A I mean, I'm going to -- how much?

19 Q How many gift boxes were produced?

20 MR. MONAGHAN: When you say produced, you  
21 mean manufactured?

22 MR. SHELOWITZ: Yes.

23 THE DEPONENT: The gift boxes, right,  
24 themselves?

25

1 BY MR. SHELOWITZ:

2 Q You talked about 18.95.

3 A Yes.

4 Q So what is your understanding of what was  
5 included in the items that were sold for 18.95?

6 A The specific thing that was sold for 18.95 I  
7 think was a CD in a gift box with a book that -- a  
8 fully illustrated book with a story.

9 Q Okay. And how many of those were sold?

10 A I'm not sure.

11 Q And so my question to you is were you  
12 involved in -- you said that you were involved in the  
13 production of everything.

14 A Yes.

15 Q And you were involved with the oversight.

16 And how would they be manufactured? Would you be the  
17 person to order -- to call the company that would be  
18 the -- the product to be manufactured that was being  
19 sold for 18.95 that you just described?

20 A Either myself or Anne.

21 Q And did you do it in this case?

22 A I may have had conversations with them, and I  
23 know I did interview companies, and I'm not sure who  
24 said -- I'm not sure who gave the go-ahead, me or Anne,  
25 on that.

1 Q And you don't remember how many --

2 A I think maybe 1,000 copies. You know, it's  
3 hard -- it was a long time ago. So it's -- you know,  
4 we're talking about 1994. So it's -- it's a long time  
5 ago.

6 Q And did you ever order after the initial  
7 order of 1,000, did you ever have a second order?

8 A Of the gift boxes?

9 Q Yes.

10 A No, I don't think we ordered -- reordered the  
11 gift boxes. I'm not sure, but I don't think so.

12 Q And it is correct that you never produced  
13 those gift boxes like you did for Songs for Dogs in  
14 1994 or Songs for Cats later on?

15 A That's correct.

16 Q So going back to the 10,000 unit number that  
17 we talked about for the Songs for Cats -- for the Songs  
18 for Dogs, excuse me. So if 1,000 was produced, then  
19 you would say 9,000, you know, of those 10,000 were  
20 maybe for Songs for Cats; is that correct?

21 A I'm confused with the question. Could you  
22 repeat it, please?

23 Q We were talking earlier about what the total  
24 sales have been, and I was asking you, you know, how  
25 much money the company made from the sales of Songs for

1 Cats and you said you had no idea.

2 A Right.

3 Q And so you then described the fact that you  
4 were getting numbers from Anne and units sold; is that  
5 correct?

6 A Yes.

7 Q And so my question to you was -- I'm trying  
8 to understand what -- you said that 10,000 is the  
9 number --

10 A Yeah.

11 Q -- that you believe was sold for Songs for  
12 Dogs.

13 A Yes, approximately that. Yes.

14 Q Okay. And so, again, I'm trying to  
15 understand what amounts you may have earned from those  
16 sales. You talked about 18.95.

17 Now, you've produced 1,000, you don't know if  
18 you've sold 1,000. Do you have any of those gift box  
19 and book sets left over anywhere?

20 A Yeah, we have some of them, and they've  
21 actually become collectors' items on the --

22 Q And do you know how many you have?

23 A No, I don't.

24 Q And who would know that?

25 A Anne possibly would know that.

1 Q Do you have a warehouse where you store --

2 A We have a storage area where we have them.

3 Q And where is that located?

4 A In our office. Outside our office in  
5 Garnerville.

6 Q Is that the one in Garnerville Holding  
7 Company?

8 A Yes.

9 Q And with regard to the Songs for Cats, do you  
10 know how many units were sold?

11 A I'm not sure how many units were sold.

12 Q Do you think it was more than 1,000?

13 A Very possibly.

14 Q Do you think it was more than 2,000?

15 A Very possibly.

16 Q Was it more than 3,000?

17 A Very possibly.

18 Q Was it less than 5,000?

19 A I don't know.

20 Q Was it more than 4,000?

21 A I'm not sure.

22 Q So would you say that the best of your  
23 recollection as you sit here today that that number was  
24 probably between 3,000 to 4,000 of Songs for Cats sold?

25 A Possibly. Possibly more. I just don't know

1 -- I just don't think it sold quite as much as Songs  
2 for Dogs because we did not -- we weren't able to get  
3 the marketing that we got with Songs for Dogs when we  
4 did --

5 Q Did you ever ask Anne how many units of Songs  
6 for Cats you had sold?

7 A I may have.

8 Q And did she ever answer you?

9 A She may have.

10 Q And --

11 A I mean, it was -- it was in the thousands. I  
12 just don't know exactly what it was.

13 Q And would you remember if it was -- if it  
14 was, you know, between 3,000 and 4,000 units? You're  
15 under oath and it's --

16 A I don't really remember. That's it. I don't  
17 remember. So that's my honest answer, is I don't  
18 remember how many units -- I don't remember. I  
19 remember the Songs for Dogs figure, I don't remember  
20 the Songs for Cats figure.

21 Q When was the first time that you met Anne  
22 Bryant?

23 A I met Anne Bryant in the 1970s in a recording  
24 studio in Manhattan.

25 Q Have you done any joint work with Ms. Bryant?

1 A Yes.

2 Q And can you describe that for us?

3 A Oh, I first met her on -- she was doing  
4 arranging for a very successful songwriter, Jennie  
5 Redington, who owned her own company, Twin Star Music  
6 in Manhattan, a jingle company, and she was arranging  
7 her album and I was singing on her album. That's when  
8 I first met Anne.

9 Q And when did you first go into business  
10 together?

11 A We first went into business together when we  
12 formed Gloryvision. But I knew Anne before that  
13 because Anne -- that's when I first met Anne, I told  
14 you, with Jennie Redington.

15 Then Anne went on to have her own company and  
16 she hired me as a singer. And she wrote The  
17 Transformers and wrote The Jem show. And I sang one of  
18 the leading roles, Pizzazz, in the Jem show and did a  
19 lot of work with her when she had her own company. And  
20 then we started collaborating during that period on a  
21 band that I had. I had already had a hit dance record  
22 in New York City.

23 Q Okay.

24 A And then Anne and I started --

25 Q The question was when did you first go into

1 business together, just to --

2 A I thought you said collaborating.

3 Q No. When did you first go into business  
4 together?

5 A When we formed Gloryvision it was  
6 surrounding -- in the early '90s we did a children's  
7 production called the Adventures of the Mirror Kids,  
8 and that was when we formed Gloryvision.

9 Q Okay.

10 A Or the late '80s or early '90s.

11 Q Before 1994 when you started to sell Songs  
12 for Dogs that we had discussed earlier, had Gloryvision  
13 sold any other recordings?

14 A No.

15 Q So is it true that Songs for Dogs was the  
16 first product?

17 A No, actually, it's not true. We did a very  
18 complex and extensive production on a piece called the  
19 Adventures of the Mirror Kids, and we had a cassette  
20 and a book manufactured with that. And actually that's  
21 in Westwood, New Jersey. That's where we originally  
22 started manufacturing Songs for Dogs and Songs for  
23 Cats.

24 And then we were beginning to market this as  
25 an audio product for kids. And it was a very inventive

1 piece and we had some difficulty with marketing it in  
2 the sense -- and so we said we're going to hold off on  
3 that. We completed it, we're going to hold off on that  
4 for a little bit. And then we did Songs for Dogs after  
5 that product.

6 Q And just again, that -- what did you call  
7 that first piece that you had just -- Adventurers?

8 A It's called the Adventures of the Mirror  
9 Kids.

10 Q And --

11 A It was a radio show for children.

12 Q And was there any form of media or records or  
13 anything else that was sold by Gloryvision --

14 A No.

15 Q -- regarding that?

16 A No, other than -- no.

17 Q So with regard to the first kind of sale that  
18 was made by Gloryvision, is it correct that it was  
19 Songs for Dogs?

20 A Yes.

21 Q And following that was Songs for Cats; is  
22 that correct?

23 A Yes.

24 Q And is it also true that there have been no  
25 other products sold by Gloryvision other than Songs for

1 Dogs and Songs for Cats?

2 A At the moment, yes.

3 Q Did you and Ms. Bryant ever enter into a  
4 written contract with each other?

5 A Whatever the -- whatever the corporate papers  
6 of Gloryvision are, that's our contract together, the  
7 50 percent owners.

8 MR. SHELOWITZ: I'd request that that be  
9 produced. We had asked for that in the  
10 production. We would like to have the -- if it's  
11 bylaws, operating agreements, certificate of  
12 incorporation. Those corporate documents.

13 MR. MONAGHAN: I understand your request.

14 BY MR. SHELOWITZ:

15 Q Were there any other agreements that you and  
16 Ms. Bryant have entered into?

17 A No.

18 Q With regard for -- with regard to the  
19 production of Songs for Dogs, do you recall who was  
20 involved with the project from the beginning until the  
21 end until the CDs and cassettes were made?

22 A Which part of the project?

23 Q From the -- writing the songs to producing  
24 them and selling them. Were there any people other  
25 than you and Anne Bryant involved?

1 A Well, we hired an engineer, a mastering  
2 facility and a mastering engineer, and we hired vocal  
3 talent from the best studio singers in New York City to  
4 sing on the albums.

5 Q And who is the vocal talent that you're  
6 referring to?

7 A Myself and the other cast of characters that  
8 sang on the records.

9 Q And who are those people?

10 A Russell Valasquez, Jennie Redington, Leslie  
11 Miller, Julie Eigenberg.

12 Q After Russell Valasquez who was the other  
13 person?

14 A Leslie Miller, Julie Eigenberg, Mike Harvey.

15 Q Mike Hardy?

16 A Mike Harvey. Harvey. Mike Harvey.

17 Al Dana, Tom Dawes, who is now deceased.

18 Q And these are all on Songs for Dogs, each of  
19 these performers?

20 A Yes, this is a combination of -- I'm kind of  
21 referring to Songs for Dogs and Songs for Cats. We  
22 used a similar cast on both albums.

23 Let me see if I left anybody out. And my  
24 brother, Tom Bernfeld, also sang on the albums.

25 Q Tom Bernfeld?

1 A Uh-huh.

2 Q And is there anywhere that we can see any  
3 kind of attribution of any of these singers in any of  
4 your materials anywhere?

5 A They're given credit on the albums' booklets  
6 and in the book, and on the -- on the CD, not on the  
7 back of the CD, but in the booklets. And on the gift  
8 box it was -- I think the credit was on the back of the  
9 box. So, yes.

10 Q And this was in -- were any of the people  
11 that you just named not involved on both of the CDs?  
12 You named Ellen Bernfeld. Well, that's you. Russell  
13 Valasquez, okay, was he involved with Songs for Cats  
14 songs?

15 A He was on Songs for Cats. I don't think he  
16 was on Songs for Dogs.

17 Q And do you recall which songs he was involved  
18 with?

19 A Yeah. He sang the lead on the Scat Cat.  
20 That was a --

21 Q Okay. Anything else?

22 A No. He did -- that was Tap Tap, Jr., the  
23 Scat Cat. He did a Sammy Davis kind of thing --  
24 version of The Scat Cat.

25 Q Okay. And Leslie Miller, was she on Cats and

1 Dogs?

2 A Leslie Miller was on Cats and Dogs.

3 Q And what did she sing?

4 A She sang Tomorrow's Another Day on Dogs. She  
5 sang the lead on that. She sang on Cats in the  
6 background on a number of tunes; Watchin' Purry Mason.  
7 She sang on Curious X9, the backgrounds on that. She  
8 sang on Allergic To You.

9 Q And did you pay these singers to perform on  
10 the Songs for Dogs and Songs for Cats songs?

11 A Anne handled all of that, so --

12 Q So you don't know if any of these --

13 A Yes. Oh, no, we did pay people, absolutely.

14 Q And the question is have you paid all of  
15 them?

16 A I'm not sure whether we paid all of them.  
17 Anne would know the answer to that.

18 Q And did you ever pay any of these people --  
19 well, strike that.

20 When you paid them, what was the model of  
21 payment, if you recall?

22 A I'm not really sure because Anne handled the  
23 payment aspect of the company, paying the performers.

24 Q Did you pay them, you know, per hour of work?

25 A That was Anne's department. Because Anne

1 owned a very successful production company, so she  
2 handled the payment of the performers.

3 Q So you don't know anything about how these  
4 people were compensated for their role on --

5 A They were compensated probably -- I mean,  
6 from my knowledge as a studio singer for, you know, a  
7 session, et cetera, a session, which is probably --  
8 it's, you know, a session rate.

9 Q So you would pay them for a session rate?

10 A Yeah.

11 Q Okay. And then with regard to any sales of  
12 the records or the songs on -- any of the songs on  
13 Songs for Dogs and any of the songs on Songs for Cats,  
14 did you ever share any of the revenue from that with  
15 any of these people?

16 A I'm not sure. I don't really know. Not to  
17 my knowledge.

18 Q Do you recall how much studio time it took to  
19 record Songs for Cats?

20 A No.

21 Q Do you recall approximately how long?

22 A No. It was a very involved production. It  
23 took a long time. It was a tremendous amount of work.

24 Q Like a week?

25 A Oh, no, much more than a week. It took -- it

1 was -- we were in production probably for months. You  
2 know, a couple of months.

3 Q Like about two months?

4 A Maybe more.

5 Q Three months?

6 A Maybe more than three months.

7 Q You wouldn't recall exactly how long it would  
8 take you to produce this?

9 A It was a period of months. I mean, I would  
10 say -- I don't know if it was more than -- you're  
11 talking about -- you're talking about the actual  
12 production of when you went in to record it or --  
13 because it's --

14 (Overlapping speech.)

15 Q You would go one day on, you know, some  
16 songs, you would sing them, they would be finished, and  
17 then you would bring the next singers in?

18 A I would say it took us, I'm not exactly sure,  
19 a couple months. But that's not including the writing  
20 and the prep work before that.

21 Q I'm not talking about the writing, I'm  
22 talking about the --

23 A The actual studio.

24 (Overlapping speech.)

25 Q Hiring some engineers to do the work. So the

1 question is how long did you have the engineers working  
2 in the studio with the performers?

3 A Oh, I would say maybe a couple of months.

4 Q Every day?

5 A It wasn't necessarily every day for a couple  
6 of months.

7 Q That's what I'm trying to understand,

8 Ms. Bernfeld, is, you know --

9 A Well, maybe it took us, maybe, a month or  
10 two. I mean, if you were going to distill it down,  
11 maybe -- to look at it every day, it's hard to know  
12 exactly. But maybe -- maybe a month, maybe a month and  
13 a half, maybe two months.

14 You're talking about recording and mixing and  
15 mastering; right?

16 Q No, I'm talking about having the performers  
17 that you just listed for us in the studio. How much  
18 time did it take you with those recorders in the studio  
19 to sing? I mean, how many takes would you do? Five  
20 takes of each song?

21 A Oh, I thought you were talking about how long  
22 it took for the -- you're not asking me how long it  
23 took for the production of the album?

24 Q No, I'm talking about how long were the  
25 performers that you just listed for us in the studio?

1 A Okay. Well --

2 Q With Cats.

3 A With Cats. Maybe -- maybe with the -- maybe  
4 a month if I were going to distill it and try to break  
5 it down, a day-to-day thing. It's hard to -- because,  
6 you know, we would record with one performer and --

7 Q Studio time?

8 A Excuse me?

9 Q A month of studio time?

10 A Possibly. Sure. I mean, possibly. Yeah.

11 Q Do you have any kind of receipts or any proof  
12 of any -- of the payments that were made to any of  
13 these people so you can identify how long it was?

14 A I'm not sure whether we have that  
15 information. Anne would know more about that.

16 Q And which studio did you record in?

17 A We recorded at Gloryvision studio.

18 Q In Garnerville?

19 A Yeah. We recorded -- yes.

20 Q And that was for Songs for Dogs and Songs for  
21 Cats?

22 A Yeah. Songs for Dogs -- see, we have a  
23 studio in Garnerville. We also had a studio at -- in  
24 Stony Point as well, and so they were recorded in both  
25 places. It was a professional studio.

1 Q Now, going back to this Garnerville location,  
2 do you own the rooms that you have there or do you  
3 lease them?

4 A They're leased.

5 Q And what is the length of the term of that  
6 lease?

7 A It's a renewable yearly lease, yearly to  
8 two-year lease. We've rented it for two years at a  
9 time and a year and --

10 Q When was the first time you started to use  
11 that Garnerville studio?

12 A Oh, I think in 1994.

13 Q And you've used it continuously until today?

14 A Yes.

15 Q And is there sound equipment in that studio?

16 A Yes.

17 Q And whose sound equipment is that?

18 A That is Gloryvision's and some of Anne  
19 Bryant's equipment as well.

20 Q And how often do you visit the Garnerville  
21 studio each year?

22 A Anne visits it much more often than I do.

23 Q How often do you --

24 A I maybe visit it once, twice a week.

25 Q Every week?

1 A When I'm in the New York area.

2 Q And when are you in the New York area?

3 A From the end of May until the end of October.

4 Q And how long have you been following that  
5 schedule that you just described?

6 A For the last two years.

7 Q With regard to each song on Songs for Cats,  
8 can you tell me what songs you wrote?

9 A The Songs for Cats?

10 Q Yes.

11 A Yeah. I wrote Allergic To You. I wrote  
12 Curious X9. I wrote Watchin' Purry Mason. What else  
13 did I write? Let me see. I'm going blank.

14 There we go. I wrote Sweetie The Gourmet.

15 Anne wrote the bridge on Sweetie The Gourmet. I wrote  
16 Curious --

17 Q What did you write, though? Allergic?

18 A Yeah, I wrote Allergic, I wrote Curious X9.

19 I wrote the words to Oh, My Little Sushi. I wrote Scat  
20 Cat, I wrote I Pray for the World, I wrote Catarina,  
21 The Ballerina, I wrote Where Will I Sleep Tonight, and  
22 I wrote I'm Purrfect.

23 I wrote more of Songs for Cats than Anne did  
24 because Anne's -- she had -- her mother had -- she was  
25 -- she had met her mother and her mother had passed

1 away right around that time, so --

2 Q And on Songs for Dogs which songs did you  
3 write?

4 A On Songs for Dogs I wrote with -- on my own  
5 totally?

6 Q Yes.

7 A I wrote Could You Be An Angel, Follow The  
8 Bone Lady. I wrote a lot of them with Anne, so -- see,  
9 we wrote -- a lot of that album we wrote together.

10 I wrote the words for The Very First Dog. I  
11 wrote the words for Doggie Salsa. I wrote Follow The  
12 Bone Lady. But I may have collaborated on the bridge  
13 on that with Anne.

14 I wrote Could You Be An Angel. Anne and I  
15 collaborated on If I Only Had A Thumb. And we also  
16 collaborated on I Stole The Christmas Pie. And I can't  
17 remember if I wrote the -- that was a collaboration, I  
18 think, The "No" Song, because that was -- and Anne  
19 wrote -- Anne wrote Please Don't Forget My Birthday.  
20 And I can't remember -- I've Been Cryin' All Night  
21 Since You're Gone, I can't remember if I wrote --  
22 collaborated with that or Anne wrote that.

23 Q Okay. You're familiar with the lawsuit.  
24 Obviously you're named as a Plaintiff --

25 A Uh-huh.

1 Q -- against Media Right Productions, Doug  
2 Maxwell and The Orchard.

3 A Uh-huh. Yes.

4 Q Whose idea was it to file this lawsuit, if  
5 you know?

6 MR. MONAGHAN: Object to that. That's  
7 attorney-client. You're getting into  
8 attorney-client areas.

9 MR. SHELOWITZ: I'm not getting into  
10 attorney-client privilege. Lawyers don't decide  
11 to file lawsuits, people do. I'm just asking her  
12 if she knows who -- whose idea it was to file this  
13 lawsuit.

14 MR. MONAGHAN: I still maintain the  
15 objection.

16 THE DEONENT: When -- in 2006 when we --  
17 when Anne and I were talking about marketing Songs  
18 for Dogs and Songs for Cats again and we went and  
19 -- to the Internet to see, you know, if anything  
20 was around like that, you know, if anybody had,  
21 you know, run with our idea, what the marketplace  
22 was like with that kind of an idea, we went into  
23 -- typed in Songs for Dogs and Songs for Cats and  
24 found it all over the Internet with Media Right's  
25 name on it and The Orchard's name on it. We found

1 it being sold. We found our price reduced. We  
2 found it being given away for free on servers all  
3 around the world.

4 BY MR. SHELOWITZ:

5 Q Now, when you --

6 A Can I please finish? Can I please finish?

7 Q You're not answering my question.

8 A Well, no, when we saw that, we were outraged.

9 And Anne and I were like, what happened? And it was  
10 both of our ideas.

11 Q Okay.

12 A Then we met with Mr. Monaghan and --

13 MR. MONAGHAN: You don't have to talk about  
14 that.

15 BY MR. SHELOWITZ:

16 Q You don't need to talk about your discussion  
17 with --

18 A It was both of our ideas. It was --

19 Q And with regard to seeing songs being  
20 downloaded for free, can you just elaborate on that,  
21 please? Did you --

22 A We -- yeah, I will.

23 Q Did you see songs being downloaded for free?

24 A Yeah. We saw our product being dismembered  
25 and broken up and our songs being sold separately.

1 Q But, again, my question was -- you said that  
2 you saw songs being downloaded for free, and my  
3 question is did you see songs being downloaded for  
4 free?

5 A Yes, I did.

6 Q Complete songs?

7 A Yes.

8 Q Or samples?

9 A Complete songs.

10 Q Okay. And which -- where did you identify  
11 that they were complete songs of yours?

12 A I don't know if -- E-Music or Rhapsody. A  
13 number of these different -- it would -- you know how  
14 the Internet works where you go from one thing to  
15 another thing to another thing, you're kind of surfing  
16 along, and then you get to a place where here is your  
17 song for free, and you can download it for free.

18 Q And --

19 A And our whole album was there for free.

20 Q And are you aware that people can purchase  
21 your music from you, in fact, and upload it onto some  
22 of the servers that you're referring to right now?

23 A I was not aware or did I ever -- I didn't  
24 ever authorize anybody to ever put my music up on the  
25 Internet digitally.

1 Q The question is do you know that it's  
2 possible for anyone to go buy a CD of yours from you  
3 and upload it on, you know, various varying servers on  
4 the Internet?

5 MR. MONAGHAN: Object to the form of the  
6 question. There's no foundation for that.

7 BY MR. SHELOWITZ:

8 Q Okay. You can answer it.

9 MR. MONAGHAN: No, she can't answer that  
10 question. I object to -- I instruct her not to  
11 answer that question.

12 BY MR. SHELOWITZ:

13 Q You said you were in the music business since  
14 you were six years old, I believe. So my question is  
15 are you aware that people can --

16 A No, I didn't say six years old, I said I've  
17 been in the music business since I was 16 years old.

18 Q I apologize.

19 A Actually 12.

20 Q I apologize for that.

21 So in all of your years in the music industry  
22 are you aware that people can buy music from you, pay  
23 you the money and then upload your music on the  
24 Internet and share it with others?

25 A I mean, are you talking about servers like

1 Napster that were shut down by the government, or  
2 whoever shut them down?

3 Q Well, there are several -- more than several  
4 that people can --

5 A Oh, you mean the -- are you talking about the  
6 illegal file sharing of copyrighted material?

7 Q All I'm talking about is whether you know  
8 that people can buy your music and upload it on the  
9 Internet and share it.

10 A Share it illegally?

11 Q However the -- I don't know whether it's  
12 legal or illegal, but --

13 A I know that people can buy your music and  
14 share it illegally.

15 Q Okay.

16 A I never authorized anybody to ever put my  
17 music up for sale digitally on the Internet. I never  
18 authored Mr. Maxwell, I never authorized The Orchard to  
19 ever sell my music digitally on the Internet and/or  
20 give it to any servers for free.

21 Q Ms. Bernfeld, there's no question --

22 A Okay.

23 Q -- being posed right now.

24 A Okay.

25 Q Are your albums available for sale by you to

1 the public?

2 A Yes.

3 Q And how can somebody purchase those albums,  
4 either the Songs for Dogs or Songs for Cats?

5 A They e-mail us or they call us.

6 Q And do you have any other channels that you  
7 currently sell Songs for Dogs and Songs for Cats?

8 A Not that I'm aware.

9 Q Did there come a time when you met with  
10 someone named Russ Palladino?

11 A Yes.

12 Q And when was that?

13 A That was in 1996 when we had finished Songs  
14 for Cats.

15 Q And what was the context in which you met  
16 Mr. Palladino?

17 A I met him in relation to replicating Songs  
18 for Cats and Songs for Dogs.

19 Q And can you elaborate on what you mean by  
20 that?

21 A He was working at Europadisk as a sales rep  
22 at the time, and I had been using a cassette  
23 manufacturer and CD manufacturer in Westwood, New  
24 Jersey prior to that and somebody had recommended  
25 Europadisk. So I called Russ and spoke with him over

1 the phone and spoke to him about prices and decided to  
2 use Europadisk for the manufacturing of Songs for Cats  
3 and Songs for Dogs.

4 So I initially talked -- spoke with him over  
5 the phone and decided to -- I think at that time I  
6 decided to use Europadisk and then went down and met  
7 with him.

8 Q You went down and met with him?

9 A Yes, I did.

10 Q And do you recall the nature of the  
11 relationship between Europadisk and yourself in  
12 connection with the Songs for Cats?

13 A They were going to be the manufacturer of the  
14 Songs for Cats CD. And they also manufactured the  
15 illustrated booklet with our story in it. And they did  
16 the same for Songs for Dogs as well.

17 Q And do you recall whether you had any  
18 agreement with Europadisk at the time, any written  
19 agreement?

20 A I don't recall any written agreement, you  
21 know, any -- there was no contract. There was a -- not  
22 that I recall. Just an agreement to manufacture  
23 whatever we had decided.

24 Q And how many -- how many CDs did you ask  
25 Europadisk to manufacture for you?

1 A I don't remember.

2 Q Was it more than five?

3 A Oh, yes.

4 Q Do you remember how much? You say you don't  
5 remember, so --

6 A I don't remember the exact number. I mean, I  
7 don't know if it was 1,000 -- I don't know if it was  
8 1,000 or -- I don't remember.

9 Q You don't remember at all? You have no  
10 recollection? You recall this discussion pretty --

11 A Yeah, I don't remember the quantities, the  
12 exact quantities. I can't remember 1,000, 2,000, more,  
13 less. I don't remember that, those -- the figures.

14 Q Do you have an approximate recollection of  
15 how much you --

16 A Maybe. I don't remember. Maybe it was  
17 1,000, maybe it was 2,000. I don't remember.

18 Q Of each or both?

19 MR. MONAGHAN: If she doesn't remember, she  
20 doesn't remember.

21 THE DEPONENT: I don't remember. It was a  
22 long time ago.

23 BY MR. SHELOWITZ:

24 Q I know, but you just said that it was maybe  
25 1,000, maybe 2,000. So if you remember that, I'm

1 trying to understand whether it's 1,000 to 2,000 of  
2 Cats and 1,000 to 2,000 of Dogs or 1,000 to 2,000 all  
3 together?

4 A I really don't remember.

5 Q Do you have any records?

6 A We have records. Anne, you know, kept track  
7 of that side of the business more, so she would know --  
8 she may be more knowledgeable about those figures and  
9 also the records.

10 Q Now, you just remembered quite vividly that  
11 you met Russ Palladino. You called him, you visited  
12 him, you were involved with the order. And now you're  
13 saying that Anne would know more of the information.

14 So I'm confused, because it seems like whenever --

15 (Overlapping speech.)

16 Q So we'd like to know for the record, because  
17 this is a key part of this case that you brought  
18 against my clients, and I would like to know who has  
19 the basis for the lawsuit. And if you're the one who  
20 entered into these discussions, why would Anne know the  
21 numbers?

22 A Well, I was a phone person. I did all the  
23 interviews. I did a lot of the talking. And that's  
24 why -- I spoke with people more. Anne is more -- she  
25 -- and I'm a singer and Anne is more of the writer.

1 She's a composer, arranger. She writes notes and she's  
2 more of a paper person. And so she kept more of an  
3 organization with papers. She kept more of the records  
4 and looks at paper more and I'm more of a talker. So  
5 that's why I'm saying that that was her area more than  
6 mine.

7 Q Okay. Although you were the one who did the  
8 deal with Russ Palladino and Europadisk?

9 A I initially spoke with Russ Palladino and  
10 also met Russ Palladino.

11 Q And I thought you --

12 A Excuse me?

13 Q -- CDs from Russ Palladino?

14 A Could you repeat yourself? I couldn't hear  
15 the question.

16 Q Did you order manufacturing of the CDs from  
17 Russ Palladino?

18 A Yeah, I ordered the CDs. But I talk with  
19 Anne about everything. I never do something without  
20 discussing it with Anne. So it's not like I functioned  
21 as a solo person in this business and like I do all  
22 this ordering and Anne doesn't know about it.

23 Q You told Russell, you know, please  
24 manufacture X number, he told you the prices, you knew  
25 the price, and you made the decision; is that right?

1 A After I discussed it with Anne. In other  
2 words, I don't make decisions --

3 Q Did Anne ever call Russ Palladino and tell  
4 him how many units to order, to manufacture?

5 A I'm not sure.

6 Q Why would she in that case if you were the  
7 one --

8 A I probably spoke with Russ. But Anne and I  
9 made a decision on -- that's what I'm saying, that Anne  
10 would know. You asked me initially how come I'm  
11 deferring to Anne. Because -- I'm deferring to her  
12 because we discussed everything. And if I don't  
13 remember exactly what it was, she may remember.

14 Q And --

15 A It's not like I'm trying to --

16 Q -- how did you pay for the manufacturing of  
17 these CDs from Europadisk?

18 A Yeah. We financed the production and the  
19 manufacturing and all the artwork we had done.

20 Q Did you pay by check or by cash?

21 A Oh, no, we paid by check.

22 Q And who is the person who is signing the  
23 checks for Gloryvision?

24 A We both signed the check.

25 Q And so would that be correct in that you also

1 signed this check?

2 A Yes, most likely.

3 Q And do you have an invoice that you received  
4 in connection with the production of these CDs?

5 A Uh-huh.

6 Q And where is that located?

7 A That's in our Gloryvision files.

8 Q Because we requested a whole slew of  
9 documents and we don't have anything like that. We  
10 haven't received any checks. We haven't received  
11 anything.

12 MR. MONAGHAN: I don't agree with that, but  
13 I'm not going to -- I'm letting you go as far as  
14 you wish here, Mr. Shelowitz, so that we can  
15 complete this deposition.

16 MR. SHELOWITZ: If you'd like, we've been  
17 going for a while, if you want to take, you know,  
18 a ten-minute break, I think now would be a good  
19 time for that.

20 (Break.)

21 MR. SHELOWITZ: Okay. Back on the record.

22 Could you read back the last question, please?

23 (The last question was read back by the court  
24 reporter.)

25 MR. SHELOWITZ: Okay. I'm just going to

1 repeat our -- or reiterate our request for the  
2 production of documents.

3 Again, Ms. Bernfeld, we submitted an  
4 extensive request for the production of documents  
5 to your counsel, which I'm going to show you now.  
6 We'll mark it as Bernfeld Exhibit A. And for the  
7 court reporter, because of the last-minute nature  
8 of this, we're going to just work with one copy.

9 Mr. Monaghan has a copy of the request for the  
10 production of documents, and he's going to give it  
11 to you for marking purposes, although let me just  
12 -- was this marked in the -- let me just see. It  
13 may have been marked already.

14 MR. MONAGHAN: No.

15 MR. SHELOWITZ: Yeah. Okay. So we'll mark  
16 it as Bernfeld Exhibit A if that's okay, if  
17 there's no objection.

18 MR. MONAGHAN: Sure. Are you talking about  
19 the request or the response?

20 MR. SHELOWITZ: The request. Do you have  
21 that?

22 MR. MONAGHAN: That I'm looking for. I  
23 thought you asked -- earlier I thought you asked  
24 me about the response.

25 Are you talking about Defendants' First